

Message Text

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ARA/ECP:SFOUTS

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TO AMEMBASSY SANTO DOMINGO PRIORITY

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SUBJECT: SHIPPING: US MARITIME POLICY STATEMENT

1. US SHIPPING LEGISLATION AND MARITIME POLICIES ARE
BASED ON THE PREMISE THAT REASONABLE COMPETITION AND NON-
DISCRIMINATION AMONG CARRIERS BEST SERVE THE DEVELOPMENT OF
EFFICIENT SHIPPING SERVICES AND THE EXPANSION OF TRADE. WE
SEEK TO HAVE A MERCHANT MARINE CAPABLE OF CARRYING A SUB-
STANTIAL PART OF OUR FOREIGN TRADE ON A COMPETITIVE BASIS,
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AND WE RECOGNIZE THAT MANY OTHER NATIONS HAVE THE SAME
ASPIRATION.

2. WITHIN UNCTAD, THE US HAS SUPPORTED THE DESIRE OF

DEVELOPING COUNTRIES TO EXPAND THEIR MERCHANT MARINE CAPABILITIES AND TO ASSIST THEIR NATIONAL SHIPPING LINES. RESOLUTION NO. 70 OF UNCTAD III RECOGNIZES THAT DEVELOPING COUNTRIES SHOULD HAVE AN INCREASING AND SUBSTANTIAL PARTICIPATION IN THE CARRIAGE OF MARITIME CARGOES, ESPECIALLY THOSE GENERATED BY THEIR OWN FOREIGN TRADE, AND SHOULD BE ABLE TO EXPAND THEIR MERCHANT MARINES THROUGH THE ADOPTION OF SUCH MEASURES AS MAY BE APPROPRIATE TO PERMIT THEIR SHIP-OWNERS TO COMPETE IN THE INTERNATIONAL FREIGHT MARKET, AND THUS CONTRIBUTE TO A SOUND DEVELOPMENT OF SHIPPING.

3. AT THE SAME TIME, WE BELIEVE THAT GOVERNMENTS MUST TAKE INTO ACCOUNT THE FACT THAT THEIR FOREIGN COMMERCE AND THE ARRANGEMENTS FOR TRANSPORTING IT ARE OF EQUAL CONCERN TO THEIR TRADING PARTNERS, WHOSE TRADE AND SHIPPING INTERESTS ARE EQUALLY INVOLVED. THE U.S. THUS OPPOSES GOVERNMENT CARGO RESERVATION MEASURES AFFECTING COMMERCIAL TRADE ON GROUNDS THEY ARE POTENTIALLY DETRIMENTAL TO BOTH OUR TRADE AND CARRIERS INTERESTS. IN THE U.S. VIEW, CARGO RESERVATION SHOULD NOT BE SO EXTENSIVE THAT REASONABLE SERVICE CANNOT BE MAINTAINED ON AN ECONOMIC BASIS, AND THE AREAS OPEN TO COMPETITION SHOULD BE AS WIDE AS POSSIBLE IN ORDER TO PROMOTE EFFICIENT SHIPPING SERVICES AT REASONABLE RATES FOR THE TRADING PARTNERS CONCERNED.

4. SPECIFICALLY WITH RESPECT TO CARGO RESERVATION, THE UNITED STATES FOLLOWS THE PRINCIPLE THAT THE LINES OF THE TRADING PARTNERS SHOULD HAVE EQUAL ACCESS TO EACH OTHERS GOVERNMENT-CONTROLLED CARGOES. U.S. LAWS AND REGULATIONS PERMIT EQUAL ACCESS TO U.S. GOVERNMENT-CONTROLLED CARGOES PROVIDED THERE IS NO DISCRIMINATION AGAINST U.S. SHIPPING IN OUR FOREIGN TRADE. WE KNOW OF NO OTHER EQUITABLE RULE.

5. U.S. LAW AND REGULATIONS DO NOT REQUIRE EQUAL ACCESS AND/OR POOLING AGREEMENTS AS A PREREQUISITE TO SERVE U.S. FOREIGN TRADES, EITHER WITHIN OR WITHOUT A CONFERENCE SYSTEM. HOWEVER, U.S. POLICY RECOGNIZES THAT WHERE SUCH AGREEMENTS ARE CONSIDERED NECESSARY TO RESOLVE CON-

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FLICTING INTERESTS OR MALPRACTICES IN A TRADE, THE INITIATIVE TO ENTER INTO ANY AGREEMENT MUST COME FROM THE LINES THEMSELVES. EQUAL ACCESS AND POOLING AGREEMENTS CONSTITUTE COMMERCIAL ARRANGEMENTS BETWEEN THE COMPANIES INVOLVED, AND ARE DISTINCT FROM GOVERNMENTAL AGREEMENTS.

6. REGARDING POOLING AGREEMENTS AMONG SHIPPING LINES, WE PREFER THOSE WHICH INTERFERE LEAST WITH COMPETITION AND THUS PROTECT THE INTERESTS OF SHIPPERS AS WELL AS SHIP-OWNERS. CONSISTENT WITH OUR LEGISLATION, THE FEDERAL MARITIME COMMISSION HAS APPROVED AGREEMENTS WHICH SIMPLY PROVIDE EQUAL ACCESS BY EACH SIDE TO GOVERNMENT-CONTROLLED CARGOES AND HAS APPROVED BROADER POOLING AGREEMENTS WHICH

DIVIDE REVENUES EQUALLY BETWEEN THE CARRIERS OF THE TRADING PARTNERS WITH RESPECT TO THE TRAFFIC THEY CARRY, WITHOUT INVOLVING QUOTAS OR OTHERWISE RESTRICTING THE FREEDOM OF "THIRD FLAGS" TO COMPETE FOR NORMAL COMMERCIAL CARGOES. IT SHOULD BE NOTED FURTHER THAT U.S. LEGISLATION DOES NOT PROHIBIT POOLING AGREEMENTS WHICH FIX SHARES FOR ALL CARRIERS IN A GIVEN TRADE. HOWEVER, OUR LAWS, AS INTERPRETED, REQUIRE THAT SUCH AGREEMENTS WHICH SEVERLY INHIBIT COMPETITION BE JUSTIFIED AS SERVING A REAL TRANSPORTATION NEED.

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7. IN THE EVENT A FOREIGN GOVERNMENT RESPONSIBLE FOR CREATING A DISCRIMINATORY SITUATION FAILS TO APPRECIATE THE RIGHTS OF U.S. COMMERCIAL AND SHIPPING INTERESTS WITH RESPECT TO OUR BILATERAL TRADE AND OUR CARRIERS' PREROGATIVE TO PARTICIPATE EQUITABLY IN THE CARRIAGE OF OUR FOREIGN COMMERCE AND IS UNWILLING TO FACILITATE MEASURES TO ALLEVIATE DISCRIMINATORY PRACTICES AND RECONCILE CONFLICTING INTERESTS IN GOOD FAITH, THE ONLY RECOURSE LEFT TO THE AMERICAN CARRIER IS TO APPEAL TO THE FEDERAL MARITIME COMMISSION FOR RELIEF UNDER U.S. SHIPPING LEGISLATION, E.G; SECTION 19(B), MERCHANT MARINE ACT, 1920.

8. THE FEDERAL MARITIME COMMISSION, AN INDEPENDENT REGULATORY AGENCY, IS STATUTORILY REQUIRED UNDER SECTION 19(B) TO TAKE COUNTERVAILING MEASURES AGAINST ANY FOREIGN GOVERNMENT OR OTHER ACTIONS WHICH ARE DISCRIMINATORY AGAINST U.S. TRADE AND SHIPPING INTERESTS.

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NATORY AGAINST U.S. TRADE AND SHIPPING INTERESTS.

9. PRESENTLY, THE FEDERAL MARITIME COMMISSION HAS UNDER CONSIDERATION IMPLEMENTING REGULATIONS FOR SECTION 19(B) WHICH WOULD SET FORTH POSSIBLE COUNTERVAILING MEASURES THAT THE COMMISSION MAY CONSIDER ADOPTING SHOULD A FOREIGN GOVERNMENT NOT CEASE DISCRIMINATING IN FAVOR OF ITS SHIPPING INTERESTS. THESE INCLUDE A) IMPOSITION OF EQUALIZING FEES OR CHARGES; B) LIMITATIONS OF SAILINGS TO AND FROM U.S. PORTS OR OF THE AMOUNT OR TYPE OF CARGO DURING A SPECIFIC PERIOD; C) SUSPENSION IN WHOLE OR IN PART OF OR ALL TARIFFS FILED WITH THE COMMISSION FOR CARRIAGE TO AND FROM U.S. PORTS; AND D) ANY OTHER ACTION THAT THE COMMISSION MAY FIND NECESSARY AND APPROPRIATE IN THE PUBLIC INTEREST TO ADJUST OR MEET ANY CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES. THE LATTER COULD CONCEIVABLY INCLUDE A COMPLETE EMBARGO ON THE DISCHARGE IN U.S. PORTS OF CARGOES FROM A DISCRIMINATING COUNTRY IF DEEMED APPROPRIATE BY THE COMMISSION.

10. THE VERY PURPOSE OF THESE IMPLEMENTING REGULATIONS

IS TO CLARIFY FOR ALL CONCERNED THE TYPE OF ACTION THE COMMISSION MAY BE FORCED TO TAKE UNDER ALREADY EXISTING LEGISLATIVE AUTHORITY IN THE FACE OF CONTINUING DISCRIMINATION AGAINST U.S. TRADE AND SHIPPING INTEREST BY A FOREIGN GOVERNMENT. THERE HAVE BEEN A NUMBER OF PAST INSTANCES WHERE THE FEDERAL MARITIME COMMISSION AND ITS PREDECESSORS WERE COMPELLED TO INVOKE SECTION 19(B); ORDERS WERE ADOPTED AND ISSUED IN 1936 AND 1954 TO COUNTERMAND FOREIGN SHIPPING LINE DISCRIMINATION. ACTION WAS ALSO TAKEN ON THREE OCCASIONS (1946, 1961, AND 1964)

AGAINST THE FLAG VESSELS OF THREE DIFFERENT COUNTRIES TO COUNTERACT DISCRIMINATORY LEGISLATION AND PRACTICES. IN EACH INSTANCE, HOWEVER, IT WAS UNNECESSARY TO IMPLEMENT THE ORDER BECAUSE THE PARTY CONCERNED REMOVED OR CEASED THE DISCRIMINATORY MEASURE OR PRACTICE ONCE THE ORDER WAS CIRCULATED.

11. WHERE GOVERNMENTS HAVE ADOPTED EXTENSIVE CARGO
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RESERVATION MEASURES, PARTICULARLY OVER COMMERCIAL IMPORT AND EXPORT CARGOES, U.S. GOVERNMENT INTERCESSION HAS BEEN NECESSARY AND WILL CONTINUE TO BE FORTHCOMING IN ORDER TO PROTECT OUR FOREIGN COMMERCE AND TO BRING ABOUT AN EQUITABLE RESOLUTION OF CONFLICTING INTERESTS. IN THIS REGARD, THE UNITED STATES PREFERS TO EXERCISE RESTRAINT AND SEEK SOLUTIONS WHICH ARE MUTUALLY ACCEPTABLE TO OTHERS CONCERNED. AT THE SAME TIME, WE TRUST THAT OUR TRADING PARTNERS WILL ACT IN A SIMILAR MANNER. KISSINGER

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